

MANDATE

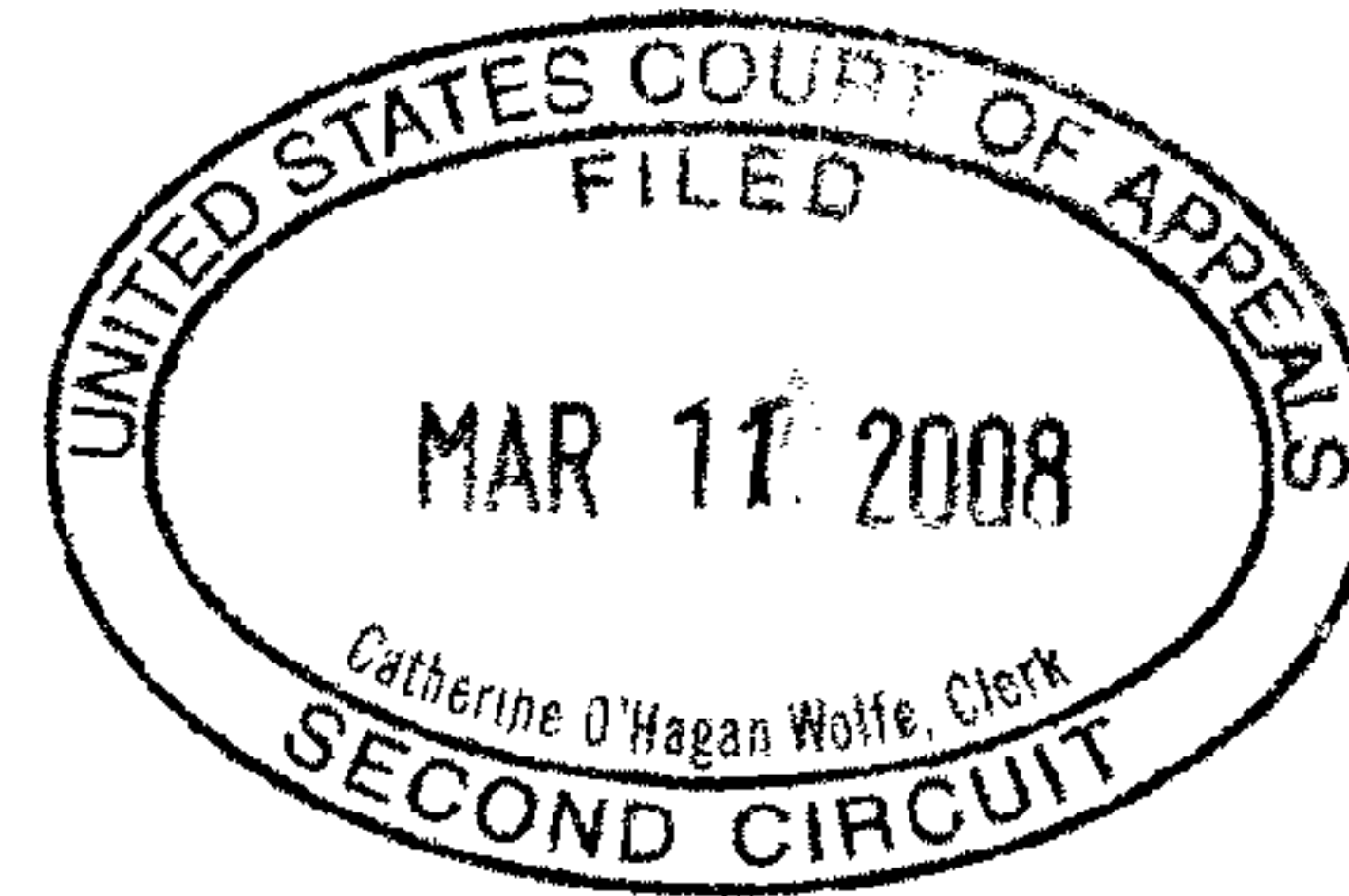
S.D.N.Y.-N.Y.C.
07-cv-11553
Wood, C. J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11th day of March, two thousand eight,

Present:

Hon. John M. Walker, Jr.,
Hon. Guido Calabresi,
Circuit Judges,
Hon. Stefan R. Underhill,*
District Judge.



Dwayne Chapman,

Petitioner,

v.

08-0305-op

Lawrence Sears,

Respondent.

Petitioner, *pro se*, moves to remand his 28 U.S.C. § 2254 petition to the United States District Court for the Southern District of New York, which transferred the petition to this Court after it concluded that it was successive. Alternatively, Petitioner requests that, if this Court also concludes that the petition is successive, it issue an order authorizing the district court to consider his successive § 2254 petition. Upon due consideration, it is hereby ORDERED that the remand request is DENIED because the § 2254 petition was properly transferred to this Court as a successive petition. Further, it is also ORDERED that the request for leave to file the § 2254 petition in district court is DENIED because Petitioner has not satisfied the criteria set forth in 28 U.S.C. § 2244(b). Petitioner has not demonstrated that the evidence he now relies on is "new" within the meaning of § 2244(b)(2) or "establish[ed]" by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty." 28 U.S.C. § 2244(b)(2).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

A TRUE COPY

Catherine O'Hagan Wolfe, Clerk

by

Estelene Phillip
Deputy Clerk

By:

Frank R...

*The Honorable Stefan R. Underhill, of the United States District Court for the District of Connecticut, sitting by designation.

SAO-KW

—ISSUED AS MANDATE: APR 11 2008

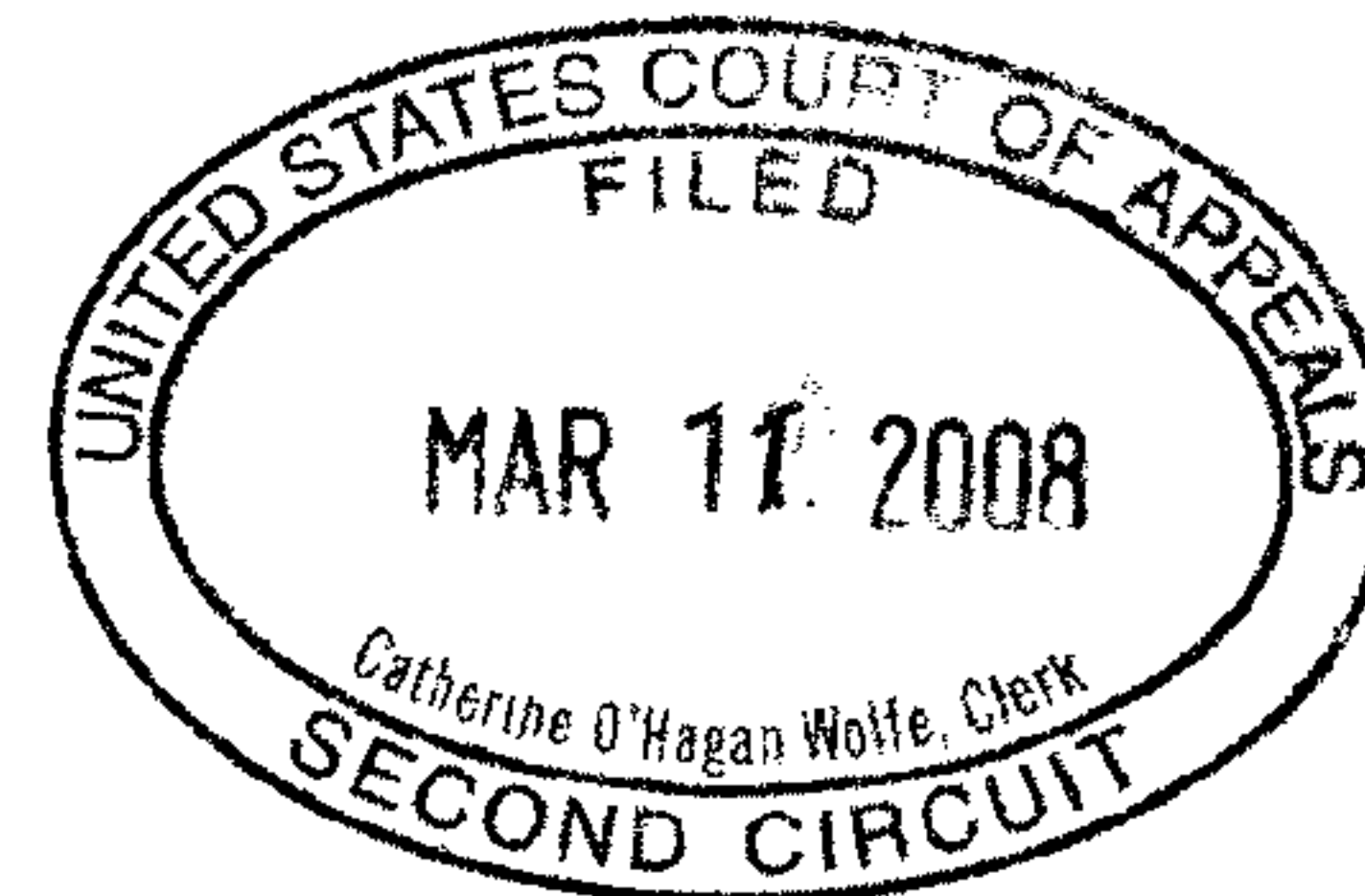
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FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

THE MANDATE CONSISTING OF
ITEMS BELOW, HAS BEEN RECEIVED
() OPINION () STATEMENT OF COSTS
() ORDER

RECEIVED BY: _____ DATE: _____

By: _____

*The Honorable Stefan R. Underhill, of the United States District Court for the District of Connecticut, sitting by designation.

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